

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEREMY L. WILSON,)	Civil No. 10-84-JE
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION
v.)	
)	
BCTI SCHOOL OF COMPUTERS,)	
and UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendants.)	
)	

Jeremy L. Wilson
315 High Street, #110
Oregon City, OR 97045

Pro Se Plaintiff

Sean E. Martin
U.S. Attorney's Office
1000 SW Third Avenue, Suite 600
Portland, OR 97204

Attorney for Defendant U.S. Department of Education

JELDERKS, Magistrate Judge:

Pro se plaintiff Jeremy Wilson filed this action against defendants BCTI School of Computers (BCTI) and the United States Department of Education (DOE) on January 27, 2010.

The record shows service of process on defendant DOE, which was dismissed by an Amended Opinion and Order entered by the Honorable Michael Mosman on December 15, 2010. However, there is no indication that defendant BCTI has ever been served.

Federal Rule of Civil Procedure 4(m) requires that defendants be served within 120 days of the filing of a complaint, and provides for dismissal of actions not served within that time. Based upon plaintiff's failure to meet this requirement, or to ever serve this defendant during the nearly two years that this action has been pending, I conclude that this action should be dismissed without prejudice as to defendant BCTI for failure to prosecute.

Conclusion

This action should be dismissed as to defendant BCTI for failure to prosecute. A judgment should be entered dismissing this action with prejudice as to defendant DOE, and without prejudice as to defendant BCTI.

Scheduling Order

This Findings and Recommendation will be referred to a district judge. Objections, if any, are due January 17, 2012. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 28th day of December, 2011.



John Jelderks
U.S. Magistrate Judge